



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 5, 2004

Mr. Brad Norton  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8845

OR2004-3650

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#200841.

The City of Austin Police Department (the "department") received a request for all documentation, including correspondence and e-mails, related to or originating from the Austin Police Association (the "association") since January 2001. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

We first address your claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Specifically, you claim that portions of the information you have marked are excepted under section 143.305 of the Local Government Code. Section 143.305 of the Local Government Code reads, in pertinent part:

An agreement made under this subchapter is a public record for purposes of Chapter 552, Government Code. The agreement and any document prepared and used by the municipality in connection with the agreement are available to the public under the open records law, Chapter 552, Government Code, only after the agreement is ratified by the municipality's governing body.

You state that portions of the responsive information you have identified were prepared and used by the city in its negotiations with the association. You state that at the time of the request for information and as of the day you requested a ruling from this office, the city had not reached an agreement with the association. After reviewing the documents submitted to this office that you have identified as excepted from disclosure under this provision, we conclude that the department may withhold them from disclosure at this time under section 552.101 of the Government Code in conjunction with section 143.305 of the Local Government Code.

We next address your claim that portions of the submitted information are excepted from disclosure under section 143.089(g) of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.-Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or in possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under chapter 552 of the Government Code. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

You state that the department maintains the remaining information at issue in its internal files pursuant to section 143.089(g). We note that the submitted Internal Affairs investigation file resulted in disciplinary action other than that prescribed by chapter 143. See Local Gov't

Code §§ 143.051-.055 (removal, suspension, demotion, and uncompensated duty). We therefore conclude that this remaining information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101.<sup>2</sup>

In summary, the department may withhold the marked documents under section 552.101 of the Government Code in conjunction with section 143.305 of the Local Government Code.<sup>3</sup> The department must withhold the remaining information under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.<sup>4</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

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<sup>2</sup>We note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee. You inform us and provide evidence that you have done so in this case.

<sup>3</sup>We note that documents subject to section 143.305 are available to the public under the Act after an agreement is ratified by the municipality's governing body. Therefore, in the event the city receives a subsequent request or requests for these documents after the agreement has been ratified, section 143.305 will no longer allow the city to withhold them. Accordingly, this office will address only other claimed exceptions that may apply to the information.

<sup>4</sup>Because we have resolved this issue under section 552.101, we need not address your other claimed exceptions to disclosure.


governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/lmt

Ref: ID#200841

Enc. Submitted documents

c: Mr. Lucius Lomax  
Austin Chronicle  
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(w/o enclosures)